COMPARISON OF STATE CRIMINAL TRIALS WITH THE ENGLISH AND FEDERAL.

An Englishman remarked that our criminal trials were like our watermelons, ninety-nine per cent emotional moisture, one per cent solid fact; in other words that hysteria rather than reason controls the verdicts in criminal cases in the United States. This criticism is just as applied to the State but not to the Federal courts.

For punishment to prevent crime result, punishment, must follow cause, crime, surely and immediately. Stealing must mean robbing one's self of liberty, murder committing suicide. To attain this the law's unnecessary delay must be eliminated. We believe the English courts have accomplished this. The Crippen case, a murder trial based on complex circumstantial evidence, was completed in England in three days and Crippen was convicted and hung. This case in the United States would probably have been appealed several times and finally Crippen would have been tried, so long after the commission of the crime that public sentiment would have cooled down and he would have gotten off Scot free. By the time a criminal case has been dragged through all the various courts we forget the connection between the crime and the punishment. The punishment is too remote from the crime to act as a preventative.

Mr. Fosdick, an expert on crime, has collected the following comparative figures between the United States and England and we cite them because we believe that the discrepancy between the two countries is explained by the difference in the mode of conducting criminal trials.

In 1918 New York City had 849 robberies as against 63 in London and 100 for all of England and Wales. In each of the four years from 1915 to 1918 New York City had from four to five times more robberies than occurred in all of England and Wales in any of the five years preceding the war. Statistics for homicide, including murder and manslaughter, show that for the five years commencing with 1914 and ending with 1918, New York City had more homicides than the whole of England and Wales. London is a very much larger city than Chicago and yet in 1914 the homicides in London were 46 as against

216 in Chicago; in 1915, 45 as against 198 in Chicago; in 1916, 31 as against 255 in Chicago; in 1917, 39 as against 263 in Chicago; in 1918, 37 as against 222 in Chicago.

The slowness and uncertainty of justice is the cause of our lynchings. Lynching is legalized anarchy. The people would enforce the law by violating the law. It is an attempt to perform the difficult feat of making two wrongs equal one right. Lynching would not be so bad if it were as certain as it is swift, if the mob were as good detectives as they are executioners. But it gives you a creepy feeling to think of being hung for someone else's crime. It is remarkable that there are no cases on record in modern times in which old Judge Lynch attempted to enforce the English or Federal law; and the reason is that it is generally believed that the English and Federal courts are adequate to the task.

What is the reason for this miscarriage of justice in the State courts? Is an English or Federal juror more intelligent and just than a state juror? We do not think so. It is due to the fact that in the English and Federal courts the jury gets the benefit of the knowledge and skill of the trial judge in bringing order out of the confusion of evidence and argument that is presented to the jury. In the English and Federal courts all through the trial the judge is constantly bringing the jury back to the real issues of the case and after the argument of counsel he separates their wheat from their chaff and debamboozles the jury as it were. In the State court the judge does not exercise any power for fear of violating the constitutional provisions against commenting on the evidence. In the English courts the judge is the Hamlet of the performance. In the State courts the trial is a sort of intellectual sparring match between counsel and the judge is the referee without even the power to call a foul. Thus, notice the difference between the rules in the Federal and English courts on the one side and the State courts on the other.

RULE IN FEDERAL AND ENGLISH COURTS.

"At common law, and in the absence of any constitutional or statutory restrictions, it is not error for the trial court, in its charge to the jury, to express an opinion on disputed questions

of fact, provided such questions are ultimately left to the jury for their decision, without any direction as to how they should find the facts." 38 Cyc. 1641.

The United States courts have adopted the usage of the English courts of justice where the judge always sums up the evidence and points out the conclusions which in his opinion ought to be drawn from it, submitting them, however, to the consideration and judgment of the jury.

The law as laid down by the Federal judges is best expressed in the following excerpt:

> "In the courts of the United States, as in those of England, from which our practice was derived, the judge, in submitting a case to the jury, may, at his discretion, whenever he thinks it necessary to assist them in arriving at a just conclusion, comment upon the evidence, call their attention to parts of it which he thinks important, and express his opinion upon the facts; and the expression of such an opinion, when no rule of law is incorrectly stated, and all matters of fact are ultimately submitted to the determination of the jury, cannot be reviewed on writ of error."

The province of the court and jury and the assistance that the former may and should render the latter is well expressed by Judge Swayne, who says:

> "The line which separates the two provinces must not be overlooked by the court. Care must be taken that the jury is not misled into the belief that they are alike bound by the views expressed upon the evidence and the instructions given as to the law. They must distinctly understand that what is said as to the facts is only advisory, and in no wise intended to fetter the exercise finally of their own independent judgment. Within these limitations, it is the right and duty of the court to aid them by recalling the testimony to their recollection, by collating its details, by suggesting grounds of preference where there is contradiction, by directing their attention to the most important facts, by eliminating the true points of inquiry, by resolving the evidence, however complicated, into its simplest elements, and by showing the bearing of its several parts and their combined effect, stripped of every consideration which might otherwise mislead or confuse them. How this duty shall be performed depends in every case upon the discretion of

the judge. There is none more important resting upon those who preside at jury trials. Constituted as juries are, it is frequently impossible for them to discharge their function wisely and well without this aid. In such cases, chance, mistake, or caprice, may determine the result."

RULE IN WASHINGTON AND A MAJORITY OF STATES.

"In a majority of the states, usually because of constitutional or statutory provisions, trial courts are not permitted, in charging juries, to comment on the facts or express an opinion on the weight of the evidence." 38 Cyclopedia of Law & Procedure, page 1646.

This is the law not only in such old and conservative States as Virginia, West Virginia, Massachusetts, Illinois, Maryland, Georgia, South Carolina and Kentucky, but also in such new and progressive States as Oklahoma, North Dakota, Montana, Oregon and Washington.

Many of the constitutional provisions of the recently admitted States were copies of those framed many years ago in the old States, and Washington is no exception to this rule. A law that protected us in 1800 might oppress us in 1915. A constitutional rule is often the tyranny of a dead hand, and this is particularly true of Sec. 16, Article IV of the Constitution of Washington. Such Article provides as follows:

"Judges shall not charge juries with respect to matters of fact nor comment thereon, but shall declare the law."

The courts, in construing this provision, have held that all remarks and observations as to the facts before the jury are positively prohibited.

Think of it! Opposing counsel, blindly partisan, can play battledore and shuttlecock with the facts, but a non-partisan, unbiased judge can say no word. His Majesty, The Constitution, has put twelve inexperienced men at the helm and dropped the pilot Judge.

WHAT IS THE REMEDY?

We believe the only remedy is to give the judge more power by removing these constitutional restrictions and restoring the

old common law rule in the state courts. We also think there should be fixed an arbitrary time limit of from sixty to ninety days in which a criminal case can be concluded and returned from the appellate court. Our courts must be temples of justice, not vaudeville shows for the display of legal wit.

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